

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KING INTERVENORS,)	
)	
Petitioners,)	No.
)	
vs.)	PETITION FOR
)	JUDICIAL REVIEW
IOWA UTILITIES BOARD,)	
)	
Respondent.)	
)	

COME NOW, the King Intervenors, pursuant to Iowa Code 17A.19(1), hereby submit this “Petition for Judicial Review” (“Petition”) seeking judicial review of the Iowa Utilities Board’s August 8, 2023 “Order addressing Petitions to Intervene and Setting Meeting.” In support of their petition, plaintiffs state the following:

PARTIES

1. The King Intervenors are a group of Iowa residents who petitioned to intervene in Iowa Utilities Board Docket No. HLP-2021-0001. The King Intervenors include the following individuals:

- a. The Hon. Steve King, a resident of Crawford County, Iowa
- b. Jeffrey Reints, a resident of Butler County, Iowa,
- c. Michael Daly, a resident of Johnson County, Iowa,
- d. Mark Joenks, a resident of Clay County, Iowa,
- e. Ted Junker, a resident of Butler County, Iowa,
- f. Jessica Wiskus, a resident of Linn County, Iowa, and
- g. James and Janet Norris, residents of Montgomery County, Iowa.

2. The Iowa Utilities Board (“IUB”) is a division of the Iowa Department of Commerce. The IUB has jurisdiction to issue hazardous liquid pipeline permits pursuant to Iowa Code § 479B. IUB Docket No. HLP-2021-0001 is a petition for a hazardous liquid pipeline permit pursuant to Iowa Code § 479B.

JURISDICTION

3. This Court has jurisdiction pursuant to Iowa Code § 17A.19(1), which states, “A preliminary, procedural, or intermediate agency action is immediately reviewable if all adequate administrative agency action has been exhausted and review of the final agency action would not provide an adequate remedy.”

VENUE

4. Venue in this Court is proper pursuant to Iowa Code § 17A.19(2), which allows for judicial review of agency action in Polk County district court.

FACTUAL BACKGROUND

5. On June 16, 2023, the IUB issued an “Order Regarding June 6, 2023 Status Conference; Setting Procedural Schedule; and Granting Intervention” (“Scheduling Order”) in IUB Docket No. HLP-2021-0001. Among other scheduling items, the IUB established an intervention deadline of July 10, 2023, and a deadline for intervenors to submit pre-filed written testimony on July 24, 2023.

6. On July 10, 2023, each of the King Intervenors submitted a Petition to Intervene in IUB Docket No. HLP-2021-0001. Mr. King filed his petition through his attorney, Anna Ryon, while the additional King Intervenors filed their petitions pro se.

7. On July 19, 2023, the IUB issued an “Order Addressing Petitions to Intervene” (“First Intervention Order”), which denied each of the King Intervenors’ petitions to intervene.

In the First Intervention Order, the IUB gave parties whose petitions to intervene were denied five days to file supplemental petitions with additional information in support of their petitions to intervene. (First Intervention Order at 18).

8. On July 24, 2023, the King Intervenors, as a group, through their attorney, Anna Ryon, filed “Supplemental Petitions to Intervene” describing the legal and factual errors in the IUB’s First Intervention Order and requesting reconsideration of the King Intervenors’ petitions to intervene.

9. Also on July 24, 2023, the King Intervenors submitted pre-filed written testimony in IUB Docket No. HLP-2021-0001. The King Intervenors submitted the pre-filed testimony of the following individuals: Jeffrey Bonar, Jeffrey Reints, Michael Daly, Mark Joenks, Ted Junker, Jessica Wiskus, and James and Janet Norris.

10. On August 8, 2023, the IUB issued an “Order addressing Petitions to Intervene and Setting Meeting” (“Second Intervention Order”). In the Second Intervention Order, the IUB denied the King Intervenors’ Supplemental Petitions to Intervene.

11. The procedural schedule for IUB Docket No. HLP-2021-0002 established in the Scheduling Order includes the following additional relevant dates:

- a. Summit Carbon Eminent Domain Staff Report Response Testimony Due July 21, 2023.
- b. Witness and Exhibit List Due August 14, 2023.
- c. OCA and Intervenor Rebuttal to Summit Carbon’s Eminent Domain Staff Report Response Testimony Due August 14, 2023.
- d. Discovery Deadline, August 17, 2023.
- e. Evidentiary Hearing (Beginning with Exhibit H Testimony) – August 22, 2023 until concluded.

**THE IUB ERRED AS A MATTER OF LAW IN
THE SECOND INTERVENTION ORDER**

12. In the Second Intervention Order, the IUB stated, “The Board is not ruling on standing, but whether to grant intervention.” (Second Intervention Order at 13). In support of this contention, the Board noted the difference between the language of IUB Rule 7.13(3), which grants the Board discretion in determining when to grant intervention, and Iowa Code § 17A.19, which authorizes any party who is “aggrieved or adversely affected” by an agency action to seek judicial review of the action.

13. The IUB’s contention that that there is a distinction between standing for judicial review of agency action and permissive intervention under IUB rules overlooks the fact that administrative agencies perform multiple distinct functions, which generally fall into the categories of legislative and judicial functions. The definition of who is “aggrieved or adversely affected” by an agency action depends on the underlying function the agency was performing.

14. In all cases where an agency acts in a legislative capacity, such as rulemaking, a wide variety of parties can be “aggrieved or adversely affected” by the agency action. In those cases, judicial review at the district court will be an original action and the party seeking judicial review need not have participated in the rulemaking process in order to be aggrieved or adversely affected.

15. However, when an agency acts in a judicial capacity, that agency is adjudicating a contested case between two or more parties. Judicial review of an order in a contested case is not an original action in district court, but an appeal of a final agency order in which the district court acts in an appellate capacity. In order for a party to have standing to be aggrieved or adversely affected by an agency ruling in a contested case proceeding, and thus have standing to

pursue judicial review of that action, the party seeking judicial review must have been a party in the contested case at the agency level.

16. Accordingly, if Iowa law provides that a party has standing for judicial purposes, that party must also have the right to participate in an underlying administrative contested case. Denial of intervention in an administrative contested case denies a party of standing for judicial purposes.

17. Iowa Code § 474.3 states, “The utilities board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such a manner as will best conduce to the proper dispatch of business and the attainment of justice.” This statutory section provides the IUB with the necessary legislative grant of authority to implement its own procedural rules.

18. However, the legislative grant of authority for the IUB to implement its own procedural rules is not unlimited. The IUB can only implement its own procedural rules to the extent that the procedure is “not otherwise prescribed by law.” Thus, the IUB can allow broader intervention in its proceedings than required by law. On the other hand, the IUB cannot deny intervention to parties who otherwise have standing to participate because that would deny those parties the right to seek judicial review of agency action under Iowa Code § 17.19 even when they have legal standing to participate in the contested case at the IUB.

19. The Iowa Supreme Court has stated, “Nothing in the Iowa Code limits standing in pipeline proceedings to individuals whose property is in the direct path of the pipeline.”

Puntenny v. Iowa Util. Bd., 928 N.W.2d 829, 837 (Iowa 2019).

20. In this case, it is clear that the King Intervenors have standing to participate in IUB Docket No HLP-2021-0001. The facts demonstrating each of the King Intervenors’ individual standing are as follows:

a. The Hon. Steve King – Former Congressman King’s petition to intervene described his involvement with the original coordination of board members and potential investors for a number of Iowa ethanol plants as well as his ongoing advocacy for the residents of western and north central Iowa. Mr. King’s specific interest in IUB Docket No. HLP-2021-0001 was further demonstrated in the Direct Testimony of Jeffrey Bonar, CEO of CapCO2, filed on July 24, 2023, which described an alternative carbon capture option that does not require construction of hundreds of miles of pipeline.

b. Jeffrey Reints – Mr. Reints is a corn and soybean farmer in Butler and Bremer Counties, Iowa. He filed Direct Testimony on July 24, 2023 describing his farm and his interests in the ethanol industry. Mr. Reints is working with CapCO2 to pursue alternate carbon capture and utilization options that do not require construction of pipelines and has an interest in the impact of the pipelines on the ethanol industry. Additionally, although Mr. Reints’ land is not on the proposed Summit pipeline route, his farm is on the route of the proposed Navigator pipeline and he is interested in IUB Docket No. HLP-2021-0001 because the legal and factual findings of the Board in that docket will set precedent for the Navigator pipeline proceeding.

c. Michael Daly – Mr. Daly lives on land in rural Johnson County, Iowa. He filed Direct Testimony on July 24, 2023 detailing his concerns with the impact of carbon dioxide pipelines on the rural landscape. Additionally, Mr. Daly’s property is located close to the carbon dioxide pipeline proposed by Wolf Carbon Solutions US LLC (“Wolf”). Wolf has already filed its petition for a permit pursuant to Iowa Chapter 479B (IUB Docket No. HLP-2022-0002). Many of the issues in IUB Docket No. HLP-2021-0001 are issues of first impression and the legal and factual findings of the Board will have precedential value in the Wolf proceeding. Mr.

Daly is interested in having input into Board decisions that may ultimately determine the outcome of the Wolf proceeding.

d. Mark Joenks – Mr. Joenks lives in Greenville, Iowa, in a house only 375 feet from Summit’s proposed pipeline. He filed Direct Testimony on July 24, 2023 detailing his concerns with the dangers of living so close to a high-pressure carbon dioxide pipeline. As a corn grower, he also expressed concerns about the dangers related to farming on land above a carbon dioxide pipeline.

e. Ted Junker – Mr. Junker lives on a farm outside of New Hartford, Iowa. He filed Direct Testimony on July 24, 2023. Mr. Junker’s land is not located on the Summit pipeline route, but is on the route of the carbon dioxide pipeline proposed by Navigator Heartland Greenway LLC (“Navigator”). Navigator has already filed its petition for a permit pursuant to Iowa Chapter 479B (IUB Docket No. HLP-2021-0003). The legal and factual findings of the Board in IUB Docket No. HLP-2021-0001 will have precedential value in the Navigator proceeding and Mr. Junker is interested in having input into Board decisions on issues of first impression that may ultimately determine the outcome of the Wolf proceeding.

f. Jessica Wiskus – Ms. Wiskus lives in Linn County, Iowa. She filed Direct Testimony on July 24, 2023. Her land is not on the Summit pipeline route, but both her home and her family’s farm are on the carbon dioxide pipeline route proposed by Wolf. Like Mr. Junker and Mr. Daly, Ms. Wiskus is interested in IUB Docket No. HLP-2021-0001 because the legal and factual findings of the Board in this docket will set precedent for the Wolf pipeline proceeding. Additionally, Ms. Wiskus’s Direct Testimony describes a broad range of public concern with carbon dioxide pipelines that weigh on the side of the public cost of the Summit pipeline.

g. James and Janet Norris – Mr. and Ms. Norris live in Montgomery County, Iowa and Summit’s pipeline will pass between two parcels of their farmland. They filed Direct Testimony on July 24, 2023 detailing their safety and community concerns with the construction of a carbon dioxide pipeline so close to their land and in areas where people live.

21. The Iowa Supreme Court has held that individuals with interests similar to those of the King Intervenors have standing to participate in hazardous liquid pipeline proceedings. Notably, the Iowa Supreme Court found standing for an individual with the following interests: “Her home sits about one mile from the pipeline. She submitted an affidavit voicing concern for her own safety and the immediate environment around her property as well as her belief that the pipeline will contribute to climate change, damage Native American cultural sites, and pollute Iowa waterways.” *Puntenney v. Iowa Utilities Bd.*, 928 N.W.2d 829, 837 (Iowa 2019).

22. The Iowa Supreme Court has stated, “[W]e as a general matter do not grant deference to an agency when the legal terms being construed have independent legal meaning not within its expertise.” *Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 185 (Iowa 2016). The IUB’s decision in the Second Intervention Order was based on an erroneous interpretation of standing that has independent legal meaning not within the IUB’s expertise and is therefore not entitled to deference on judicial review.

THE IUB’S DECISION WAS ARBITRARY AND CAPRICIOUS

23. By ignoring the sworn testimony and explicitly-stated additional concerns of the King Intervenors in their Supplemental Petitions to Intervene and continuing to rely on “direct impact” as the standard for intervention, the IUB arbitrarily and capriciously failed to apply its own standards for intervention.

24. Board Rule 7.13(3) states, “Any person having an interest in the subject matter of a proceeding may be permitted to intervene.”

25. In the Second Intervention Order, the IUB stated, “In determining whether to grant intervention, the Board shall consider factors including, but not limited to, the prospective intervenor’s interest in the subject matter of the proceeding, the effect a final decision in the proceeding may have upon the prospective intervenor’s interest, and the extent to which the prospective intervenor may be expected to assist in the development of a sound record.” (Second Intervention Order at 10).

26. With respect to Mr. King, the Board held: “As it relates to Congressman King, the Board in its July 19, 2023 order found he did not meet the requirements of 199 IAC 7.13(3). In his supplemental filing, Congressman King asserts he has a general interest in ethanol and property rights. The Board stands by its determination in its July 19, 2023 order and will deny his petition to intervene.” (Second Intervention Order at 14).

27. The error in the IUB’s denial of Mr. King’s intervention is already being seen in the testimony at the evidentiary hearing in Docket No. HLP-2021-0001. Several landowners have testified that CapCO2 offers an alternative to carbon sequestration, making the construction of hundreds of miles of pipeline unnecessary. IUB Member Josh Byrnes has also questioned several witnesses about CapCO2. On July 24, 2023, in addition to the Supplemental Petitions to Intervene, Mr. King filed the Direct Testimony of Jeffrey Bonar, CEO of CapCO2. The evidentiary clearing has made it clear that Mr. Bonar’s testimony will help create a complete record in the proceeding. It is also clear that no other party to the proceeding is representing the same interest as Mr. King, because no other party has presented a witness to discuss alternatives to carbon sequestration.

28. Additionally, Mr. King's interests are similar to those of Bold Iowa, who filed a petition to intervene on January 11, 2022. In its petition to intervene, Bold Iowa explained that its "[d]irector and founder, Ed Fallon, is a former Iowa lawmaker with unique expertise in eminent domain law" and that Bold Iowa's "purpose is to oppose what our supporters view as the misuse of eminent domain to build pipelines, and to encourage genuine solutions to the climate crisis." Mr. King is also a former lawmaker with unique expertise in eminent domain law who has a purpose of opposing the misuse of eminent domain to build pipelines.

29. The IUB granted Bold Iowa's petition to intervene on May 9, 2022. It is arbitrary and capricious for the IUB to grant intervention to Bold Iowa but not Mr. King.

30. With respect to Michael Daley, Ted Junker, Jeffrey Reints, and Jessica Wiskus, the IUB stated that they "have property or interests at issue that may be addressed in other dockets, specifically Docket Nos. HLP-2021-0003 and HLP-2022-0002. Therefore, they do not meet the requirements of 199 IAC 7.13(3). While there may be common elements between dockets, each docket has its own facts and issues that must be addressed in the respective docket." (Second Intervention Order at 13).

31. The IUB invited parties in Docket Nos. HLP-2021-0003 and HLP-2022-0002 to participate in proceedings in Docket No. HLP-2021-0001 precisely because the issues of first impression being adjudicated in Docket No. HLP-2021-0001 will determine the outcome of issues in those other dockets. Specifically, when the IUB considered arguments about the scope of federal preemption of pipeline safety regulation, the IUB invited Navigator Heartland Greenway, LLC and Wolf Carbon Solutions US, LLC to participate in briefing and oral argument on the issue. ("Oral Setting Oral Argument," at 2, Oct. 7, 2022).

32. It is unreasonable and unjust for the IUB to invite the participation of other pipeline companies in IUB Docket No. HLP-2021-0001 when the pipeline companies' interests may be impacted by proceedings in Docket No. HLP-2021-0001 but then deny individuals on other pipeline routes the opportunity to participate in Docket No. HLP-2021-0001.

33. With respect to Mark Joenk, James Norris, and Janet Norris, the IUB stated that "the Board will deny their petitions to intervene as these persons' interests will be represented by other parties to the proceeding and these individuals have not established that their participation will substantively assist in the development of the record." (Second Intervention Order at 14). However, the IUB failed to identify which other parties will adequately represent their interests.

34. By denying intervention because their interests will be represented by other parties in the proceeding, the IUB essentially created a de facto "first come, first served" criteria for intervention.

35. The IUB arbitrarily and capriciously changed the requirements for intervention in the middle of this case. Previous parties with interests similar to, and often even more vague and tenuous than, the interests of the King Intervenors were granted intervention, including:

- a. Sierra Club Iowa Chapter, who filed a petition to intervene on March 30, 2022. In support of its petition to intervene, Sierra Club explained its interest in IUB Docket No. HLP-20021-0001 as follows, "Although Summit Carbon Solutions LLC (Summit) claims that its pipeline project will address climate change, Sierra Club disputes that and would present evidence at a hearing in this case to support that position. Summit also asserts that its project will enhance the long-term viability of the ethanol industry. Sierra Club believes that the use of ethanol serves to extend our reliance on fossil fuels, thus contributing to climate change.

Finally, the Summit pipeline will be crossing numerous rivers and streams in Iowa. A rupture of the pipeline where it crossed those rivers and streams will release carbon dioxide into the water, filling the water with carbonic acid. Sierra Club members who recreate in and on these waters will be adversely impacted by a pipeline rupture.” The IUB granted Sierra Club’s petition to intervene on May 9, 2022.

- b. Food and Water Watch, who filed a petition to intervene on June 20, 2022. Food and Water Watch asserted a general interest in IUB docket No. HLP-2021-0001, explaining, “Our mission is to protect Iowa’s environment, water resources, and farming communities; as well as to prevent the worst impacts of climate change.” The IUB granted Food and Water Watch’s petition to intervene on August 11, 2022.
- c. Charles Isenhardt, who filed a petition to intervene on November 1, 2022. Mr. Isenhardt is a state representative from Dubuque County who petitioned to intervene based on “a public policy interest in the environmental and climate impacts of the project.” The IUB granted Mr. Isenhardt’s petition to intervene on February 10, 2023.
- d. Republican Legislator Intervenors for Justice (“RLIJ”), who filed a petition to intervene on July 10, 2023. RLIIJ is a group of 20 Republican Members of the Iowa General Assembly who stated, “Each of the members of RLIIJ is also concerned with assuring their constituents, and all citizens of Iowa, that important due process considerations are expressed before the Board as it considers the

Summit proposal.” The IUB granted RLII’s petition to intervene on July 19, 2023.

THE IUB VIOLATED INTERVENORS’ DUE PROCESS RIGHTS

36. Procedural due process requires that interested parties have notice and an opportunity to be heard. *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 690-91 (Iowa 2002). Specifically, the opportunity to be heard must be “at a meaningful time and in a meaningful manner.” *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 145 (Iowa 2013) (citation omitted).

37. In the First Intervention Order, the IUB denied a large number of petitions to intervene with a blanket statement that the petitioners “are not directly impacted” by Summit’s proposed pipeline. (First Intervention Order at 10). With this finding, the Board created a new legal standard for intervention that has no basis in any law or regulation.

38. The IUB claims that it “did not create a new term but was assisting landowners in the intervention process.” (Second Intervention Order at 12). However, when reaching its decision, the IUB only granted intervention to landowners of parcels subject to eminent domain. Limiting intervention only to those parties who meet the IUB’s definition of being directly impacted is the application of a legal standard, regardless of the IUB’s assertion to the contrary.

39. The First Intervention Order gave parties whose petitions to intervene were denied five days to file supplemental petitions with additional information.

40. Five days was inadequate notice for any intervenor, even one with an attorney, to attempt to understand a newly announced legal standard and develop a responsive supplemental petition to intervene. The inadequacy of the notice was compounded in the case of the numerous pro se intervenors who lacked legally-trained guidance to assist them with a response.

41. By only allowing intervenors five days to provide supplemental information, the Board failed to provide adequate notice or an opportunity to be heard in a meaningful time and manner, thus violating intervenors' procedural due process rights.

**COUNT I: JUDICIAL REVIEW OF PRELIMINARY, PROCEDURAL,
OR INTERMEDIATE AGENCY ACTION**

42. Petitioner incorporates all previous paragraphs by reference.

43. Based on the foregoing, and pursuant to Iowa Code § 17A.19(1), the IUB's Second Intervention Order is immediately reviewable because King Intervenors have exhausted all administrative remedies and review of the IUB's final order in Docket No. HLP-2021-0001 would not provide an adequate remedy. Denying intervention to the King Intervenors excludes them from all participation, presenting witnesses and evidence relevant to the IUB's final decision.

44. Pursuant to Iowa Code 17A.19(10), the IUB's Second Intervention Order is unlawful because it is:

- a. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
- b. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
- c. Inconsistent with the agency's prior practice or precedents and lacking credible reasons sufficient to indicate a fair and rational basis for the inconsistency.
- d. The product of reasoning that is so illogical as to render it wholly irrational.
- e. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have

considered prior to taking that action. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

- f. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.
- g. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.
- h. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.
- i. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

WHEREFORE, Petitioners request the following relief:

- a. Reverse the decision of the IUB denying the King Intervenors' Supplemental Petitions to Intervene and remand to the IUB with instructions to:
 - i. Review all petitions for intervention that were denied to ensure that all intervention determinations are consistent with this Court's holding; and
 - ii. Conduct a new proceeding consistent with this order that allows all parties the opportunity to participate in discovery and an evidentiary hearing in Docket No. HLP-2021-0001.
- b. Any other and further relief the Court deems just and equitable.

Respectfully submitted,
King Intervenors, Petitioners

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